

40-10-15 Performance bond -- Duration of liability under bond -- Cash deposit or securities in lieu of bond -- Surety -- Adjustment of amount.

- (1) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the division on a form prescribed and furnished by the division, a bond for performance which is payable to the state and the United States, if appropriate, which is conditioned on faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the division an additional bond or bonds to cover these increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential; and shall be determined by the division. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the division in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.
- (2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in Section 40-10-17. The bond shall be executed by the operator and a corporate surety licensed to do business in the state, except that the operator may elect to deposit cash, negotiable bonds of the United States government, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the bonded area.
- (3) The division may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the division the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.
- (4) Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. The securities shall be security for the repayment of the negotiable certificate of deposit.
- (5) The amount of the bond, surety, or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the division from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

Amended by Chapter 219, 1994 General Session